

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:11-CT-3005-FL

SEAN ROBERT FRANCIS and
DANIEL H. KING,

Plaintiffs,

v.

TRACY JOHNS, DEBORAH A.
GONZALES, CANDICE GREGORY,
KAREN STEINOUR, KENNETH R.
MCKOY and THE FEDERAL BUREAU
OF PRISONS,

Defendants.

ORDER

The matter comes before the court on plaintiff's motion to for voluntary dismissal (DE 62). An action may be dismissed voluntarily by the plaintiff without order of the court by filing a notice of dismissal at any time before service by the adverse party of an answer or a motion for summary judgment. See Fed. R.Civ. P. 41(a)(1). Otherwise an action shall not be dismissed on the plaintiff's request except upon an order of the court. See Fed. R.Civ. P. 41(a)(2).

Because defendants have answered plaintiff's complaint, plaintiff's action may only be voluntarily dismissed pursuant to rule 41(a)(2), which permits voluntary dismissal "on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). A plaintiff's motion under rule 41(a)(2) should not be denied absent substantial prejudice to the defendants. Andes v. Versant Corp., 788 F.2d 1033, 1036 (4th Cir. 1986).

Here, plaintiff states that he “is unable to proceed further with [his] remaining claims.” Pl.’s Mot. (DE 62). The court finds this reasoning is consistent with rule 41(a)(2). Accordingly, plaintiff’s request for voluntary dismissal of this action is GRANTED, and the action is DISMISSED without prejudice. All pending motions are DENIED as MOOT.

SO ORDERED, this 17th day of July, 2013.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is written in a cursive, flowing style. The first name "Louise" is written with a large, ornate capital "L". The last name "Flanagan" is written with a capital "F" and a trailing flourish.

LOUISE W. FLANAGAN
United States District Judge